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IN THE

# Supreme Court of The United States

OCTOBER TERM

## No. 311

STATE OF LOUISIANA EX REL SCHWEGMANN BANK AND TRUST COMPANY ET AL,
Appellants,

versus

J. W. JEANSONNE, STATE BANK COMMISSIONER,
Appellee.

On Appeal from the Court of Appeal for the First Circuit, State of Louisiana

## JURISDICTIONAL STATEMENT

CHARLES A. O'NIELL, JR.
1801 American Bank Building
New Orleans 12, Louisiana

TUCKER & SCHONEKAS
1603 Pere Marquette Building
New Orleans, Louisiana
Attorneys for Appellants

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

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NO.

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STATE OF LOUISIANA EX REL SCHWEGMANN BANK AND TRUST COMPANY, JOHN G. SCHWEGMANN, JR., M. DAN HOGAN, RUSSELL J. SCHONEKAS, EDGAR SCHAFER, W. A. WEAVER, SR., JULES MERAUX, CLEM B. GUILLOT, SR., CARL GOLDENBERG, J. EARL PEDALAHORE, WALTER RODRIGUEZ, AND WILLIAM W. DICKEY,

Appellants,

versus

J. W. JEANSONNE, STATE BANK COMMISSIONER,

Appellee.

---

On Appeal from the Court of Appeal for the First Circuit, State of Louisiana

---

## JURISDICTIONAL STATEMENT

Appellants appeal from a judgment of the Court of Appeal for the First Circuit, State of Louisiana, affirming a judgment of the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, and

the order and decree of the Supreme Court of the State of Louisiana, denying writs of certiorari and review to review said judgment, and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

## OPINION BELOW

The opinion of the Nineteenth Judicial District Court (R. 155) is not published. The opinion of the Court of Appeal for the First Circuit, State of Louisiana (R. 228) is reported at 144 So 2d 159 (1962). The Supreme Court of Louisiana did not render an opinion. The text of the opinions and the Louisiana Supreme Court's order are annexed hereto as Appendix A.

## JURISDICTION

This suit was one in mandamus brought in a state court of general jurisdiction to compel the State Bank Commissioner to issue a certificate of authority to appellants. The judgment of the Court of Appeal was entered on and is dated June 29, 1962. A rehearing was applied for but denied by an order dated September 25, 1962. An application for writs to the Supreme Court of Louisiana was timely made but the writs were denied by an order dated November 9, 1962. Notice of appeal was filed in the Nineteenth Judicial District Court on February 6, 1963, on which date the District Court had possession of the record.

Extensions of time were granted by the Honorable Coleman Lindsey, Judge of the said District Court, on

April 1, and May 29, 1963 for the reason that the record had not been completed by the Clerk of the Nineteenth Judicial District Court. (R 264, 266). The jurisdiction of this court is invoked under 28 USC § 1257 (2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *Yick Wo vs. Hopkins*, 118 U.S. 356 (1885); *Yakus v. United States*, 321 U.S. 414 (1943); *Schechter Corp. vs. United States*, 295 U.S. 495 (1936); *Pacific States Box & Basket Co. . . White*, 296 U.S. 176 (1936).

## QUESTIONS PRESENTED

1. Is the Bank Commissioner of the State of Louisiana empowered to impose upon the plaintiffs any conditions that he deems fit and proper as conditions to their receiving a certificate of authority to commence business as a bank, or is he limited to the conditions specifically authorized in Section 241 of Title 6 of the Louisiana Revised Statutes of 1950.

2. Is the Bank Commissioner of the State of Louisiana vested with the authority to determine in his discretion whether there is an economic need for plaintiff's bank, and refuse the certificate of authority if he decides there is no such need.

3. If the Bank Commissioner is so empowered to impose any conditions which he deems fit and proper, and to make an over all determination that there is no economic need for the bank, is the statute under which said powers are said to be granted, that is Section 241 of Title 6 of the Louisiana Revised Statutes of 1950, repugnant to

and violative of the Fourteenth Amendment to the Constitution of the United States; in that it fails to secure to applicants the equal protection of the laws.

4. Was the conduct of the Bank Commissioner in his processing of the plaintiffs' application in this case so unreasonable, capricious and arbitrary as to constitute a violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States.

## STATUTE INVOLVED

Louisiana Statutes Annotated, Revised Statutes Title 6 § 241, the text of which is annexed hereto as Appendix "B".

## STATEMENT

Appellants are the Schwegmann Bank & Trust Co., a Louisiana Corporation, and its individual incorporators who sought by mandamus to compel the issuance of a certificate of authority to them in order that the bank might commence business. The purpose of the suit was to require the Bank Commissioner to adhere to the requirements set forth in the licensing statute and to deny him the right to impose requirements on appellants not to be found in the statute. On the trial of the cause appellants showed an absolute compliance with the requirements of the act and additional compliance with many requirements not set out in the act but imposed by the Commissioner. At the trial appellants were denied access to the Commissioner's file and the Commissioner was not com-

pelled to give any reasons for various conclusions leading up to denial of the Certificate of Authority.

The District Court upheld the Commissioner's finding that the Commissioner had not exceeded his authority by imposing the various regulations, including one to the effect that the Commissioner could impose any further requirements he deemed necessary. It further found that the statutes justified all actions taken by the Commissioner.

At this point appellants applied for a new trial on the grounds that to construe the statute so as to give the Commissioner absolute discretion in the making of rules without any legislative standards whatsoever was violative of both the federal and state constitutions. (R 17, 18). Rehearing was denied (R 3), and an appeal was taken to the First Circuit Court of Appeal for the State of Louisiana which specifically found nothing unconstitutional in the case. (R 228).

In the instant case appellants have been required to post and have posted more than twice the amount required by the statute as capital. (R. 21, 141). Appellants have supplied the state with exhaustive data on prospects. (R. 27 through 126). It is now in the position of not even knowing what is being required of it or what additional data is required to satisfy previous requirements. It is this arbitrary action by the Commissioner which the Louisiana Courts say the Legislature has sanctioned and that gives rise to the appeal.

## THE QUESTIONS ARE SUBSTANTIAL

It was decided in *Yick Wo vs. Hopkins*, 118 U.S. 356, that it was a denial of due process to permit a state official to exercise absolute discretion in the issuance of a license to carry on a trade. The Court said at page 366 that if an aggrieved party resorted to mandamus to force the issuance of the license "it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent, without reason and without responsibility." This is exactly what has happened in the case at bar. The instant case presents a situation where the lack of standards is sanctioned by the state courts and the administrator is arbitrary in his application of whatever standards he has and even secretive about what those standards are.

What appellants seek to have reviewed here is the extent to which the state courts may sanction administrative law making from case to case. Perhaps more important, appellants seek review of how secretive an administrative agency may be concerning its findings and the reasons for those findings.

The Court of Appeal using the shibboleth of "in the public interest" held that the bank commissioner in any case could determine what the public interest was without any guidelines from the legislature as to what that interest was supposed to be. The Court of Appeal then held that the Commissioner was justified in denying a permit because in his opinion there was no economic necessity, the capital structure was not sufficient and growth pros-

pects were not good enough. May it please the Court, the only parties who offered evidence on any of these points are your appellants. Their evidence is not contradicted by any evidence whatsoever. The Commissioner's witnesses stated their conclusions but their reasons were held privileged by the trial court and were not available to court or counsel. (R 205 et seq.). Needless to say the appellants' evidence supports the appellants.

Further, it was admitted on trial that these reasons for rejection were never transmitted to appellants and the Commissioner claims in his answer he has further reasons which of course he hasn't yet disclosed. (R. 13).

What is presented for review to Your Honors is a substantial question for it involves the power of an appointed official to legislate from case to case and to withhold from those legislated against what the law he is making is, and exactly how such law is being applied in any given case.

An example of this case to case regulation or law making is found in the requirement of the Commissioner that in the case of appellant's bank $500,000.00 capital would be required. (R. 13). This requirement was made despite the fact that Title 6, § 234, La. Rev. Statutes of 1950, requires only $100,000.00 of capital. Thus not only is § 241, set out in Appendix B, construed to permit the commissioner to decide what the public interest is from case to case, it is construed to mean that the commissioner may fly in the face of the statute itself in setting his flexible standards.

It would seem that if the statute itself permitted the commissioner to require dissimilar capital from persons similarly situated it would be unconstitutional. See *Maryland Theatrical Corporation vs. Brennan*, 24 A2d 911 (Md. App. 1942). In the case at bar the statute does not set out the unconstitutionality, the Commissioner assumes a power which, if it had been stated in the act, would be unconstitutional. The acts of the commissioner are thereby struck with unconstitutionality.

The words "public interest" without more will not support the imposition of regulations not found in the statute. The statute itself lays down no broad guidelines to which the words public interest might be related. As interpreted by the Courts of Louisiana they stand alone as a legislative fiat to the Commissioner to legislate his own banking code. Needless to say the placing of the power to legislate in the hands of a single executive poses grave constitutional problems. *Schechter Corp. vs. United States*, 295 U.S. 495 (1936); *Yakus vs. United States*, 321 U.S. 414 (1943). When a state official is thus legislating, equal protection of the laws (*Yick Wo vs. Hopkins*, 118 U.S. 356 (1885) ) and denial of due process under the Fourteenth Amendment move to the foreground.

In the instant case there was a certain secretiveness about the Commissioner's findings. Through all the Courts Appellants have insisted that they be informed as to how they failed to satisfy the Commissioner. The correspondence (R 127 to R 136) shows no reasons given for rejection. At the trial it was testified that it was up to appellants to determine how their application was defective. (R. 202). This is a denial of due process and equal pro-

tection in its grossest form. The Commissioner states in his answer filed on the day of trial (R. 13) that there is no economic need, among other conclusions. And yet the Commissioner resisted strenuously and successfully a subpoena duces tecum aimed at learning from his file what his reasons, if any, were. (R. 205 et seq.). There was absolutely no evidence offered by the Commissioner to sustain his conclusions. The only evidence on the issues raised by the Commissioner's answer is the evidence offered by appellant which amply supports appellant.

> "The situation is different where the application for a license is denied. The applicant is entitled to opportunity to challenge a determination against him. He is denied a right to engage in a business from which he may not be lawfully excluded if he complies with the conditions properly imposed by the legislature and which must be applicable to all persons in similar situation. The conditions imposed by the Legislature are separable. Failure to show compliance with any one condition may be fatal. Then the applicant is entitled to findings which will show the particular matter determined against him. *Cf.* Pacific States Box & Basket Co. v. White, 296 U.S. 176, 56 S. Ct. 149, 8 L. Ed. 138." Elite Dairy Products vs. Ten Eyck, 271 NY 488, 3 NE 2d 606 (1936).

Appellants had the impossible task below of showing the Commissioner's actions to be arbitrary without being permitted to require evidence of the commissioner's reasons for acting. The testimony of the Commissioner and his

employee is vague and indefinite. It cites no reasons, only conclusions, and these vaguely. It lends no light to the issues. It is backed by no facts. The investigation of the Commissioner's staff is said to have encompassed only three days (R. 204) and this paltry investigation in the face of the evidence offered is not available. The fact is, the only thing in the Commissioner's file is appellants' data and there were no valid business or regulatory reasons for the denial of the charter. What reasons led Governor Davis' bank commissioner to deny Representative Schwegmann's group a certificate of authority are merely speculative. Despite the efforts of appellants, these reasons cannot be found in this record.

Any statute which authorizes regulation, or any public official who undertakes to regulate, without standards is unconstitutional. *Yick Wo vs. Hopkins, supra; City of Monticello vs. Bates,* 169 Ky 258, 183 SW 555 (1916). In the instant case there are requirements imposed by the Commissioner. These requirements were sent to appellant by the Commissioner in the very beginning. (R. 20-23). There are 19 of them. Numbers 1, 7, 10, 11 and 12 (R. 22 & 23) have some relationship to the statute. Requirements 8 and 9 as to paid in capital requires exactly twice as much as the same statute which can be found set out before the requirements on the Commissioner's letterhead. See R.S. 6:234 set out at R. 21. Requirements 2, 3, 4, 5, 6, 13, 14, 15, 16, 17 and 18 have no relationship whatsoever to the source statutes. Requirement 19 is one which it is impossible to meet and which apparently appellants ran afoul of.

> "19. The Department reserves for its protection, the right to impose any additional requirements it may deem necessary or desirable." *Requirement for the Organization of a State Bank, R. 23.*

May it please the court, this last requirement makes it absolutely impossible for appellants to obtain equal protection. The Commissioner is reserving the right in each case to change the rules. This is the denial of due process and makes it impossible to get a certificate of authority unless the Commissioner desires personally to issue one. This is what happened in our case. Appellants were told their application did not suffice. (R 17). After a letter requesting reconsideration, appellants were given 6 months to put forward new facts — without being told what was wrong or deficient. (R 19) Appellants offered any information which might be thought necessary by the Commissioner but the Commissioner never said what he considered deficient. (R. 20) Appellants requested final action granting or rejecting the application by letter to the Commissioner and asked for reasons if rejected (R. 132). This was answered by a letter of rejection without reason (R. 136).

Requirement 19 comes into play when we examine the answer. The Commissioner for the first time sets up various conclusions concerning why the certificate was rejected and pleads that there "are other reasons which, prompted defendant in refusing to grant a certificate which will be proved on the trial of this case." Article 10 of Answer, R. 13.

Absolutely no evidence to sustain any of the reasons alleged was offered. The Commissioner's file is still sacred. The Commissioner's regulations and regulation making power are given judicial sanction, and still not one reason has been proved which would justify non-issuance of the certificate. To the contrary, all reasonable requirements were met and many unreasonable ones. The continued throwing of obstacles in the path of appellants is purely arbitrary action denying due process and equal protection. *Yick Wo vs. Hopkins, supra.*

It is submitted that the decisions of the Court below in their zealous attempts to protect the public interest have created a situation where it is impossible for appellant to obtain either due process or equal protection and that in the context of this case the questions presented are substantial.

Respectfully Submitted

CHARLES A. O'NIELL, JR.
TUCKER & SCHONEKAS

by _____
Charles A. O'Niell, Jr.

**PROOF OF SERVICE**

I, Charles A. O'Niell, Jr. Attorney of record for Schwegmann Bank and Trust Company, John G. Schwegmann, Jr., M. Dan Hogan, Russell J. Schonekas, Edgar Schafer, W. A. Weaver, Sr., Jules Meraux, Clem B. Guillot, Sr., Carl Goldenberg, J. Earl Pedelahore, Walter Rodriguez and William W. Dickey, appellants herein, depose and say that on the _____of July 1963 I served a copy of the foregoing Jurisdictional Statements on J. W. Jeansonne, State Bank Commissioner, Appellee herein, by mailing a copy in a duly addressed envelope with postage prepaid to Joseph H. Kavanaugh, Assistant Attorney General and Special Counsel, Department of Justice, State of Louisiana, Baton Rouge, Louisiana.

_____

Charles A. O'Niell, Jr.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS DAY
OF JULY, 1963.

_____

NOTARY PUBLIC

## APPENDIX A

STATE, EX REL., THE SCHWEGMANN BANK & TRUST COMPANY, ET AL.

VS.

J. W. JEANSONNE, STATE BANK COMMISSIONER

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NUMBER 83,991 — DIVISION D
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

ORAL REASONS FOR JUDGMENT
SEPTEMBER 28, 1961

In this case the relators seek by a mandamus a judgment of court ordering the State Bank Commissioner to grant them a certificate of authority for the establishment of a banking association in Jefferson Parish. They allege that they have met all the requirements of the Commissioner and that his denial of their application is arbitrary and capricious. I will not relate the history of the application and its denial, except I will probably refer to it a little bit later.

As I understand the law, mandamus will lie against a public official where a purely ministerial duty is involved. Generally speaking, a mandamus will not lie against a pub-

lic official where he has exercised, as provided by law, official discretion in the matter. Mandamus will lie if it is shown that his exercise of that official discretion is arbitrary or capricious.

Under our system of government, with the three clearly defined divisions of power, it is my feeling that a court should be very careful in interfering with the official conduct of officials in the other two departments of the government. That is to say, before the court will grant relief in a mandamus proceeding it must be clearly shown that the official has acted arbitrarily and capriciously. I do not think it would be argued that there is no need for supervision and regulation of the banking business. It is recognized as being a quasi public business, and we have been accustomed since time immemorial to governmental regulations of banks. That of course means, among other things, the regulation of the conduct of a bank after it is in operation, but unquestionably it also means regulation of the organization and certification of banks. Relators do not dispute that general proposition here today. Relators' contention here, in a word, is that the Commissioner denied this certificate for a reason not provided in the law, and that brings us to a consideration of the meaning of Section 241 of Title 6 of the Revised Statutes.

I am of the opinion that it was the intention of the legislature to vest the Commissioner with authority to deny an application if in his judgment the public interest would not be subserved by the granting of the certificate, and that he is not limited in that connection to the question of the qualifications, responsibilities and standing of the persons

organizing the bank. I mention again here that the chief relator in these proceedings said on the witness stand that he recognized that the question of economic need for a bank is a legal requirement for the certification of that bank. I think that his testimony is tantamount to an admission that the interpretation I have placed on Section 241 is the correct interpretation. I have listened with interest to Mr. Tucker's argument about granting too much power to a public official, but at the same time I submit that it does not appear to me to be the intention of the legislature that all must be done to organize a bank is to submit a list of names of subscribers to stock of proposed officers and directors and of the minimum capital required by law. In that connection let me make this observation, that the law says, it shall not be less than. I take it to mean that if in the opinion of the supervising authority it should be more than, he can so require so long as that requirement is not arbitrary or capricious. In this case these relators submitted a proposition for the capital structure of $400,000, although the law said not less than $100,000.

The evidence here in rebuttal of the Commissioner's holding that no economic need for this bank was shown is scant. As a matter of fact, the evidence offered by the respondents is not too full and complete. I notice that at the beginning of the trial some question of the distance between the proposed Schwegmann bank and the recently organized Metropolitan bank was brought up and counsel for the respondents made the observation that we ought to be exact about that distance. I think it is alleged in relators' petition, at least I had that pretrial impression, about three miles, yet respondent's own witness, Mr. Vetter, was questioned about it and, if I am not mistaken, he said it was

about four miles. The documentary evidence that has been offered goes into some detail about the other banking facilities in that area. I am not talking outside the record now, because I have just said that it is there. I got the impression that this area was served originally by only two branch banks and that about the time this application was made this national bank commenced operation. I find that I was mistaken about it. There are other banking facilities in this area, and it was said by one of the witnesses that this new national bank was half a mile from the proposed Schwegmann bank, yet the application says it is two-tenths of a mile. Those are the things that the court should have a little more positive evidence about.

We come down now to what I think is the crux of this mandamus proceeding, and it arises in all mandamus proceedings where the exercise of discretion on the part of a public official is involved. That is, as I view the duty of the court, it is not that the court must find that the action of the official was completely free of arbitrariness and capriciousness but before the court is justified in issuing the mandamus the court must be clearly convinced that the action of the official was arbitrary and capricious. Let me say this, I do not know, I have no way of knowing, whether the Commissioner was actually justified in denying this application. There have been inferences here, veiled inferences, that he denied it for reasons other than are shown by the record, but I will repeat that I do not know. I find myself in this position, that is has not been shown by a preponderence of the evidence. And mind you, my understanding of the jurisprudence is that it goes a little further than that; it must be clearly shown by the evidence that the action of the public official was arbitrary and capri-

cious before a court is justified in issuing a mandamus, and that is the position I find myself in here this afternoon. That is the reason that I felt, and still feel, that no good purpose could be served by carrying this matter over and letting you gentlemen submit briefs, by my undertaking to hand down written reasons for judgment, because it boils down to a simple factual situation.

For the reasons that I have stated, admittedly in somewhat of a scattered fashion, disconnected, it is my opinion that the alternative writ of mandamus should be recalled and vacated and that the demands of the relators should be rejected, and that is the judgment of the court.

Filed:
Nov. 29, 1961
Gladys C. Hearne,
Dy. Clerk

STATE OF LOUISIANA EX REL
SCHWEGMANN BANK AND TRUST
COMPANY ET AL

VS.

J. W. JEANSONNE, STATE BANK
COMMISSIONER

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STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT
NO. 5631

Appeal from the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, Louisiana, Honorable Coleman Lindsey, Presiding Judge.

Before LOTTINGER, LANDRY and REID, Judges.

Lottinger, Judge.

The relators filed this proceeding seeking an alternative writ of mandamus directing the respondent, J. W. Jeansonne, State Bank Commissioner of the State of Louisiana to grant unto the relators, Schwegmann Bank and Trust Company, a certificate of authority to commence business as a bank. The Lower Court held in favor of the respondent, and dismissed the complaint. The relators have taken a devolutive appeal.

The petitioners herein are the Schwegmann Bank and Trust Company and eleven individual stockholders therein. On or about November of 1959, the individuals concerned commenced correspondence with J. W. Jeansonne, Commissioner of the State Banking Department of the State of Louisiana, relative to the seeking of a permit to engage in the banking business in a certain location in Jefferson Parish, Louisiana. Several meetings were held by the Commissioner, or his representatives, and the relators, during which the various procedures and requirements were discussed. On August 23, 1961 the application of relators was finally rejected by the State Bank Commissioner. The relators then filed this suit, claiming that they have complied with all the requirements of law, and that the respondent's action in refusing a certificate of authority was illegal, unreasonable, capricious and arbitrary, and asked that a writ of mandamus issue directing the Bank Commissioner to issue the certificate of authority. In answer to the petition, the Bank Commissioner denied that his action was arbitrary and capricious, and further set forth the various reasons why the certificate was denied. Among these reasons were the causes that the proposed capital structure was inadequate, that there was no economic need or necessity in the particular area for a new bank, that the earnings prospects submitted in the application were overstated, and that there were only fourteen subscribers to stock in the proposed bank of which one individual had subscribed to 62.63% of the authorized capital stock of the proposed bank. After trial of the matter the Lower Court held that the action on the part of the State Bank Commissioner was not arbitrary and capricious, and dismissed the action of the petitioners. The petitioners have taken this appeal.

The particular statute with which we are concerned in this suit is the Louisiana Revised Statutes, Title 6:241. This act provides in part that before issuing a certificate of authority to any banking association or savings bank, the Commissioner shall examine the qualifications, responsibility, and standing of the persons organizing the association or bank. The said section further provides that if the State Bank Commissioner finds that the public interest will not be subserved by permitting such persons to organize the association or bank, he shall refuse to issue the certificate.

The record reflects that correspondence as well as other procedures between the relators and the respondent were carried on for a period of some two years, or between November of 1959 until August of 1961 when the application was finally denied. During this period, several meetings were held between the Commissioner, and/or his representatives, during which various aspects of the application were discussed. A representative of the Federal Deposit Insurance Corporation was present at some of these meetings. During these meetings, the question of the capital structure of the proposed bank was discussed, as well as other matters, particularly the small number of subscribers to stock, the fact that one of the subscribers would have control of the bank, as well as the economic need for a banking business at the location submitted. On December 7, 1960, the Commissioner wrote the relators advising them that the application failed to meet the requirements of the banking department and the application was therefore denied. The relators then wrote the Commissioner requesting additional time to show a real need for the bank, in reply to which the Bank Commissioner granted respondents a period of six months from December 20, 1960 to present new and addi-

tional data to be considered by the department. During this six months period no additional data was submitted for consideration by the banking department, and on August 23, 1961 the application was finally denied.

A mandamus will issue only in cases where duties sought to be enforced are clear and unequivocal. It will only issue where the duty required to be performed is mandatory and not discretionary. *City of Gretna vs. Parish of Jefferson, 108 So. 787, 161 La. 406.* The question is therefore, whether the duty imposed upon the State Bank Commissioner by the above cited statute was discretionary, and if it was, the burden is upon the petitioners to prove that the Bank Commissioner acted in an arbitrary and capricious manner.

The petitioners take the position that R. S. 6:241 provides that the Commissioner shall examine the qualifications, responsibility and standing of the persons organizing the bank, and upon approval of their qualifications and their meeting the other requirements of the law, that the Commissioner has no discretion to refuse to issue the permit. The respondent, on the other hand, does not agree with this construction of the act, and takes the position that the act allows the Commissioner the discretion of refusing to issue the permit if he finds that the public interest will not be subserved by permitting the applicants to organize the association or bank. The Lower Court adopted the reason as set forth by the respondent, and held that the act did give the Bank Commissioner discretion to refuse to issue the certificate upon his finding that the public interest would not be served by the organization of the bank.

Under the interpretation as set forth by petitioners, every existing Board of Directors of every bank in the State of Louisiana could start a new bank in any place it saw fit, so long as it could raise the required capital, as all members of these boards are approved as to their qualifications, responsibility, and standing by the Bank Commission. We feel that the Lower Court was correct in following the interpretation as set forth by the respondent, as, to hold otherwise, would place no practical limitation upon any parties desiring to organize a banking institution. We feel that the act means that the Commissioner shall examine the qualifications, responsibility and standing of the persons organizing the association or bank, and, if he finds that the public interest will not be served by permitting such persons to organize the association or bank, he shall refuse to issue the certificate. Prior to the issuance thereof, it is within the sound discretion of the Bank Commissioner to determine that there is a public need for the particular bank which is sought to be organized. The Commissioner refused the certificate in this particular instance because he felt that the public interest would not be served by the issuance of same because there was no showing that there was an economic need and necessity in the particular area for a new bank and, furthermore because of the overstatement of the earning prospects of the proposed bank, the inadequacy of the capital structure thereof, and the fact that control of the said institution would be in one individual. We believe, therefore, that the Lower Court was correct in dismissing petitioners' suit, as the petitioners had a period of six months within which to meet the requirements of the Bank Commissioner and failed to do so. We certainly, therefore, feel that petitioners have failed to show that the Bank

Commissioner acted arbitrarily or capriciously in refusing to issue their permit.

Another error which is claimed by petitioners is the fact that a permit was issued to other individuals to open a banking institution in the Parish of Jefferson in spite of the pendency of the petitioners' application, and the application of these particular individuals was submitted subsequent to that of the petitioners herein. There is nothing in the record to disclose, however, any arbitrary or capricious action on the part of the Bank Commissioner in issuing this other permit, as the location of that particular bank was some three to four miles distant from the location proposed by the petitioners herein.

The petitioners further contend in their brief that R. S. 6:241 is unconstitutional inasmuch as it delegates to an administrative officer the legislature's law-making authority without setting up sufficient guide posts or standards from which the legislative will can be determined. They complain that the holding of the Lower Court was to the effect that the Commissioner can determine in his discretion if it is "in the public interest" to grant an application. We do not believe that such an interpretation of the statute is in violation of the Constitution. The act requires that the certificate will not be issued unless the organization of the bank is in the public interest. We feel that this is a restriction which is not an unconstitutional delegation of legislative policy. It does not grant the Bank Commissioner the right to refuse to issue the permit according to his whim or fancy. In *Schwegmann Bros. Giant Supermarkets vs. McCrory, 237 La. 768, 112 So. 2d 606,* the Supreme Court said:

"It is now well settled that the Legislature may make the operation or application of a statute contingent upon the existence of certain conditions, and may delegate to some executive or administrative board the power to determine the existence of such facts and to carry out the terms of the statute. So long as the regulation or action of the official or board authorized by statute does not in effect determine what the law shall be, or involve the exercise of primary and independent discretion, but only determines within prescribed limits some facts upon which the law by its own terms operates, such regulation is administrative and not legislative in its nature."

For the reasons hereinabove assigned, the judgment of the Lower Court will be affirmed, all costs of this appeal shall be paid by petitioners.

JUDGMENT AFFIRMED.

A TRUE COPY
Court of Appeal
First Circuit
State of Louisiana
Filed June 29, 1962

/s/ KARL LECHE
Clerk
(SEAL)

Filed September 25, 1962
P. N. Buckner,
Dy. Clerk of Court

COURT OF APPEAL, FIRST CIRCUIT,
STATE OF LOUISIANA

State of Louisiana ex rel. Schwegmann
Bank and Trust Co., et al.

vs.

J. W. Jeansonne, State Bank Commissioner

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No. 5631

Parish of East Baton Rouge

On application for rehearing.
Rehearing refused.

Baton Rouge, Louisiana, _____, 19__

(Signed) M. A. Lottinger
(Signed) Paul B. Landry, Jr.
(Signed) H. R. Reid
Judges

Filed Sept. 25, 1962
/s/ KARL LECHE
Clerk

Filed: Sept. 25, 1962
P. N. Buckner
Dy. Clerk of Court

(SEAL)

—NO. 83991—

SUPREME COURT OF LOUISIANA

New Orleans

State of Louisiana ex rel.
Schwegmann Bank and
Trust Company et al

November 9, 1962

vs.

J. W. Jeansonne
State Bank Commissioner

No. 46,374

In re: Schwegmann Bank and Trust Company et al applying for certiorari, or writ of review, to the Court of Appeal, First Circuit, Parish of East Baton Rouge

The application is denied. We find no error in the judgment complained of.

/s/ JBF
/s/ JBH
/s. FWH
/s/ EHMcC
/s/ WBH
/s/ JWS

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
November 9, 1962

Filed: July 17, 1963
P. N. Buckner
Dy. Clerk of Court

/s/ HAROLD A. MOISE, JR.
Deputy Clerk

(SEAL)

## APPENDIX B

"No banking association shall commence business or open branch offices until it has procured from the commissioner a certificate of authority, which shall not be granted until the association has furnished to him satisfactory proof that it has complied with all requirements concerning the adoption and recordation of its charter and that one-half of the subscribed capital has been paid up in lawful money. The remainder of the subscribed capital shall be paid up within ninety days after the banking association has opened its doors for business.

"In default of these requirements the directors and managers of the banking association shall in solido be fined not more than five hundred dollars, to be collected by the attorney general, who, for his services in collecting these amounts, shall receive twenty percent of the amount collected. Any increase of capital stock by amendment shall be paid up within thirty days after having been subscribed. Each banking association shall notify the commissioner of every alteration or amendment to its charter, whether to increase its capital or otherwise. These provisions apply to savings banks except as otherwise provided in R.S. 6:234.

"Before issuing a certificate of authority to any banking association or savings bank, the commissioner shall examine the qualifications, responsi-

bility, and standing of the persons organizing the association or bank. If he finds that the public interest will not be subserved by permitting such persons to organize the association or bank, he shall refuse to issue the certificate." Title 6, §241, La. R.S. of 1950.